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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-9

PLUMAS COUNTY BOARD OF SUPERVISORS and SUPERVISORS LARRY DEAN, RUSSELL PAPENHAUSEN, JOE W. CRIVELLO, OLE OLSEN, and LEONARD ROSS,

Petitioners,

v.

JOSEPH A. CALIFANO, JR., Secretary of the United States Department of Health, Education and Welfare; MARIO OBLEDO, Secretary, Health and Welfare Agency, State of California; MARION J. WOODS, Director, Department of Benefit Payments, State of California; LAURA COOPER, HAZEL WILKS, and OTTILIA LOTT, as parties to Cooper, *et al.* v. Obledo, *et al.*; JOYCE YEE-LITT, THEODORE PARSONS, LENA OLIVIER, BEVERLY O'CAMPO, and RUBEN O'CAMPO, as parties to Yee-Litt, *et al.* v. Richardson, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit (App. A of Petition) is now reported at 594 F.2d 756.

QUESTIONS PRESENTED

1. Whether the Plumas County Board of Supervisors has standing to challenge federal financial participation in optional state payments for families with unborn children under the Aid to Families with Dependent Children (AFDC) program?

2. Whether the United States Department of Health, Education and Welfare may authorize states to grant AFDC on behalf of unborn children on an optional basis?

3. Whether the District Court and Court of Appeals improperly relied on matters outside the pleadings in granting dismissal of the Supervisors' challenge to the California unborn child regulation?

4. Whether dismissal of the Supervisors' challenge to then-pending federal and state court contempt proceedings was proper?

STATEMENT OF THE CASE

This petition represents, hopefully, the last round in petitioners' challenge to state and federal welfare programs. These challenges began on May 27, 1975, when the petitioners adopted Resolution Number 75-2727 declaring that Plumas County would no longer participate in any federal or state mandated social services programs. This first protest was halted after the issuance of an injunction against Plumas County in *Obledo v. Ross*, Plumas Super. Ct. No. 8562 (1975).

On July 28, 1975, a judgment was entered in *Cooper v. Obledo*, Sacto. Super. Ct. No. 219145 (1975). This judgment implemented the decisions of the California Supreme Court in *California Welfare Rights Organization v. Brian*, 11 Cal.3d 237, 520 P.2d 970 (1974), *cert. den.*, 419 U.S. 1022 (1974), and *Cooper v. Swoap*, 11 Cal.3d

856, 524 P.2d 97 (1974), *cert. den.*, 419 U.S. 1022 (1974). The State and its agent counties were ordered to return all monies unlawfully withheld pursuant to several invalid state regulations. On November 11, 1975, and again on November 18, 1975, petitioners adopted minute orders refusing to comply with the decision in *Cooper v. Obledo*. On February 6, 1976, the Superior Court of Sacramento County adjudicated the supervisors guilty of contempt and sentenced them each to $500 fines.

On January 6, 1976, the petitioners adopted minute orders refusing to comply with two other court decisions: *Wong v. Brian*, Sacto. Super. Ct. No. 203363 (1971), and *Yee-Litt v. Richardson*, 353 F.Supp. 996 (N.D. Cal. 1973), *aff'd without opinion sub nom. Carleson v. Yee-Litt*, 412 U.S. 924 (1973). The decision in *Wong v. Brian* required reimbursement of medicaid benefits that had been unlawfully withheld pursuant to invalid state regulations. The decision in *Yee-Litt v. Richardson* required continuation of welfare assistance to recipients who requested hearings until final decisions were rendered in their cases. On January 30, 1976, Chief Judge Oliver Carter adjudicated the petitioners herein guilty of contempt of the *Yee-Litt* order and sentenced them each to $100 fines for each day of further non-compliance.

Petitioners sought judicial review of the contempt adjudications in *Cooper* and *Yee-Litt*. Final judgments were rendered in both actions affirming the contempt judgments. *Ross v. Superior Court*, 19 Cal.3d 899, 569 P.2d 727 (1977); *Yee-Litt v. Richardson*, Unpublished Memorandum No. 76-1455 (9th Cir. Aug. 28, 1978). Neither of those decisions was appealed to this Court.

During the pendency of these actions, a welfare recipient in Plumas County initiated an action against the

State of California seeking the imposition of a receivership against the county. *Larsen v. Woods*, Sacto. Super. Ct. No. 259488 (February 17, 1976). On March 24, 1977, judgment was entered directing the State to initiate receivership proceedings against Plumas County. After a hearing pursuant to California Welfare and Institutions Code § 10605, the State notified the petitioners herein that administration of the county welfare programs would be taken over by the State. After the issuance of this notice, the county agreed to end its "secession" and to comply with state and federal mandates.

As discussed herein, no point raised in the petition for certiorari presents an issue justifying the exercise of this Court's jurisdiction. No important issues of federal law are presented by this petition since the District Court and Court of Appeals properly applied this Court's rulings on standing in the federal courts. Petitioners have not suffered any injury which could be redressed by a favorable decision herein since the availability of federal financial participation inures to the benefit of petitioners and their constituents. Moreover, no conflict exists among the circuits since no Court of Appeals has ever found standing under the circumstances of this case. The petition for certiorari should therefore be denied.

REASONS WHY THE WRIT SHOULD BE DENIED

I.

THE PLUMAS COUNTY BOARD OF SUPERVISORS HAS NO STANDING TO CHALLENGE FEDERAL FINANCIAL PARTICIPATION IN OPTIONAL STATE PAYMENTS FOR FAMILIES WITH UNBORN CHILDREN

A.

In Order To Establish Standing, Petitioners Must Demonstrate That They Have Suffered Some Injury Which Is Likely To Be Redressed by a Favorable Decision.

In *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), this Court summarized the rule for determining whether the petitioners herein had standing as follows:

> "In sum when a plaintiff's standing is brought into issue the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation." 426 U.S. at 38.

Two showings must therefore be made by petitioners. First, they must demonstrate that they have suffered an injury. Second, they must demonstrate that this injury is likely to be redressed by a favorable decision.

B.

Petitioners Have an Independent Obligation Under State Law To Provide Aid to Families with Unborn Children.

In *California Welfare Rights Organization v. Brian,* 11 Cal.3d 237, 520 P.2d 970 (1974), the California Supreme Court considered the scope of the State AFDC program for unborn children. The Court first analyzed the provisions of the Social Security Act and concluded, as this Court ruled approximately one year later in *Burns v. Alcala,* 420 U.S. 575 (1975), that the unborn child program was optional with the states. *California Welfare Rights Organization v. Brian, supra,* 11 Cal.3d at 241.

Having decided that the unborn child program was optional, the California Supreme Court then had to determine if California had exercised its option. The Court noted the long-standing administrative interpretation and concluded that California had "elected to include unborn children in its AFDC plan." 11 Cal.3d at 241.

Petitioners contend, however, that the inclusion of unborn children under the California AFDC plan is dependent on the availability of federal financial participation. They argue that if federal financial participation were withdrawn, the state would exclude families with unborn children from its plan.

Petitioners' contention has already been made to and rejected by the California Supreme Court. In *Ross v. Superior Court,* 19 Cal.3d 899, 569 P.2d 727 (1977), the Supreme Court considered the propriety of a contempt sanction against the petitioners herein for violating the court order in *Cooper v. Obledo,* Sacto. Super. Ct. No. 219145 (1976). In *Ross,* the petitioners argued that the

availability of federal financial participation to families with unborn children was illegal in light of this Court's decision in *Burns v. Alcala* and that therefore the underlying court order was invalid.

The California Supreme Court expressly rejected that argument. The Court noted that, "[P]etitioners contend that the portion of the judgment implementing this court's unanimous decision in [*California Welfare Rights Organization v.*] *Brian* is erroneous under the subsequent United States Supreme Court decision in *Burns v. Alcala* (1975), 420 U.S. 575. . . . This contention is clearly erroneous on several grounds. . . . [O]ur *Brian* decision was explicitly based on our interpretation of California's statutory welfare scheme (see 11 Cal.3d at pp. 240–241 . . .), and thus is not affected by the Supreme Court's subsequent interpretation of federal legislation in *Burns.*" 19 Cal.3d at 909, n.7.

Petitioners' contention also ignores the many instances in which the California welfare programs extend beyond the availability of federal financial participation. In *Tripp v. Swoap,* 17 Cal.3d 671, 552 P.2d 749 (1976), the California Supreme Court expressly rejected the argument advanced by petitioners herein that the scope of the state AFDC program was conditioned on the availability of federal financial participation. *Tripp* was a petition for hearing from the denial of prejudgment interest to a welfare recipient who had successfully challenged an unfavorable administrative hearing decision.

One of the arguments advanced by the state in opposition to an award of prejudgment interest was that while the federal government funds a large share of the welfare payments made by the state, no federal statute authorized reimbursement to the state for interest payments. 17 Cal.3d at 684–685. This argument had been accepted

by a Court of Appeal in *Luna v. Carleson*, 45 Cal.App.3d 670 (1975).

The Supreme Court disapproved the *Luna* decision and noted that:

> "As amici have pointed out, however, *whether federal reimbursement is available is irrelevant* to the determination of the issue whether interest is recoverable against the state. *The claims of a recipient such as plaintiff are based upon an entitlement to benefits as a matter of state law.* (See *Bd. of Soc. Welfare v. County of L.A., supra*, 27 Cal.2d 81.)" *Tripp v. Swoap, supra*, 17 Cal.3d at 685, emphasis added.

The rule enunciated in *Tripp* has been consistently applied in California. The remedy for petitioners is therefore not to rely on Proposition 13 rhetoric in this Court (Petition at 14), but rather to seek a narrowing construction of state law in the California Supreme Court or in the State Legislature. That is an approach that they have chosen not to follow for obvious reasons.

C.

Since Petitioners Have an Independent Obligation Under State Law To Provide Benefits to Families with Unborn Children, Petitioners Have Not Suffered Any Financial Injury Since They Are Benefitted by the Availability of Federal Financial Participation.

The only financial injury put forward by plaintiffs to establish injury is that they have been forced to pay out tax monies in the form of AFDC payments to families with unborn children. Since petitioners cannot establish standing as federal or county taxpayers (see *Massachusetts v. Mellon*, 262 U.S. 447 (1923)), they must

demonstrate some financial injury as county administrators. That demonstration cannot be made.

Under California law, counties administer the AFDC program as agents of the State. *Ross v. Superior Court*, 19 Cal.3d 899, 569 P.2d 727, 731 (1977). Pursuant to section 403 of the Social Security Act, 42 U.S.C. § 603, federal financial participation is available to pay 50% of the cost of AFDC grants. In California, the remaining 50% of the cost of AFDC grants is divided between the State and each county. Pursuant to Welfare and Institutions Code § 15200(a), the State pays 67.5% of the non-federal share or 33.75% of the cost of AFDC grants. Each county is therefore left to pay 16.25% of the cost of its AFDC grants.

Where federal financial participation is unavailable, the non-federal share is equal to the entire cost of the AFDC grant. In such cases, the State pays 67.5% and each county pays 33.5% of its grant costs. Every county, including Plumas, is therefore substantially aided by the availability of federal financial participation since its share of the costs of grants is reduced from 33.5% to 16.25%.

Thus, if federal financial participation were not available, Plumas County would have to pay 33.5% of the grant costs for families with unborn children. Since federal financial participation *is* available, Plumas County pays only 16.25% of the grants costs for such families. Petitioners therefore have suffered no injury as a result of the availability of federal financial participation.

D.

The Claim That Petitioners Must Violate Their Oaths of Office as a Result of the Availability of Federal Financial Participation Does Not Present an Injury Likely To Be Redressed by a Favorable Decision Since Petitioners Will Be Required To Continue Assistance Under State Law.

Petitioners contend that a conflict exists between their oaths to support the laws of the United States and their duty to administer the AFDC program.[1] (Petition at 11.) Regardless of the availability of federal financial participation, the supervisors would be required to perform exactly the same acts under state law. The holding in *Aguayo v. Richardson*, 473 F.2d 1090 (2d Cir. 1973), relied on by petitioners, is therefore inapplicable.

In *Aguayo*, welfare recipients and city administrators challenged a state work program. The work program was alleged to be inconsistent with the Social Security Act. Therefore, a conflict existed between the officials' oaths to uphold state and federal law. That conflict could be eliminated by the termination of the challenged program.

In contrast, an order terminating federal financial participation for families with unborn children would not affect the petitioners' obligation to provide AFDC to families with unborn children. Petitioners acknowledge that California can establish an unborn child program with state funds. As indicated previously, California has established such an independent program. As a result,

[1] It is somewhat ironic that petitioners should contend that they are being forced to violate their oaths of office. Petitioners chose to violate these oaths when they refused to implement *any* federal or state mandated welfare programs, regardless of their legality.

state law establishing such a program creates no conflict for the county supervisors regarding their oaths of office. The only conflict that exists is between those oaths of office and the supervisors' notions of political expediency.

E.

Petitioners Have Not Suffered Any Injury To Be Redressed by a Favorable Decision Since the Contempt Proceedings Against Petitioners Were Based on Their Failure To Comply with State and Federal Court Orders.

The petitioners seem to contend that they have been injured as a result of the contempt proceedings initiated against them for failing to comply with state and federal court orders. (Petition at 10.) The adjudications of contempt would not be affected, however, by a termination of federal financial participation to families with unborn children. Petitioners therefore have no standing to challenge the legality of this practice.

The contempt proceeding in *Yee-Litt v. Richardson*, Unpublished Memorandum No. 76-1455 (9th Cir. Aug. 28, 1978), did not even relate to the provision of AFDC to families with unborn children. That case involved the provision of continuing assistance to AFDC recipients who were threatened with a termination, reduction, or withholding of assistance. *Yee-Litt v. Richardson*, 353 F.Supp. 996 (N.D. Cal. 1973), *aff'd without opinion sub nom. Carleson v. Yee-Litt*, 412 U.S. 924 (1973). Thus, no injury relating to that action would be redressed by a favorable decision herein.

Similarly, the contempt proceeding in *Ross v. Superior Court*, 19 Cal.3d 899, 569 P.2d 727 (1977), related to

the failure of the supervisors to obey a valid California state court order. Regardless of the legality of federal financial participation in AFDC payments to families with unborn children, the petitioners herein were required to obey that court order and challenge it directly in the courts, if they wished. As noted by the California Supreme Court, even if the underlying order were erroneous, such an error constitutes no defense to a contempt conviction so long as the court had jurisdiction to issue the order." *Ross v. Superior Court*, 19 Cal.3d at 909, n.7, 569 P.2d at 733, n.7. That rule, of course, is consonant with the decisions of this Court as well. See, for example, *Walker v. City of Birmingham*, 388 U.S. 307 (1967).

F.

Even if the Interpretation of California Law Were Uncertain the District Court Would Have Been Required To Abstain in Order To Allow a Definitive Construction of the State Statutes in the State Courts.

As discussed in the foregoing sections, California law would require payment of AFDC to families with unborn children even if federal financial participation were unavailable. Petitioners therefore have suffered no remediable injury and have no standing to maintain this action.

If this Court has any doubt as to the independent nature of the obligation imposed by California law on petitioners, it should still refuse to disturb the refusal of the trial court to exercise its jurisdiction. Petitioners should be required to file an action for declaratory relief in state court to construe Welfare and Institutions Code §§ 11202 and 11250.

This course of action is available to petitioners since their challenge to the state regulations was dismissed without prejudice to the initiation of an action in state court. This course would properly give to the sovereign State of California the opportunity to construe its own statutes. Assuming that respondents' construction will be adopted by the state courts, abstention also furthers the ends of judicial economy by obviating the need for judicial resolution of the federal question before this Court.

Under the abstention doctrine, a federal court with jurisdiction should still refuse to rule on a federal claim where a definitive interpretation of the challenged state statute or regulation in the state courts might avoid in whole or in part the necessity for federal adjudication. *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). In the *Pullman* case this Court explained that in the interests of federalism, state courts should be given the first opportunity to interpret their own statutes. *Id.*, at 501. See also, *Bellotti v. Baird*, 428 U.S. 132 (1976).

By staying its hand in this matter, the trial court furthered the fundamental policy concerns embodied in the abstention doctrine. As California's longstanding practice of providing AFDC to families with unborn children demonstrates, important issues of state policy are presented by this case. Not only would the state courts be provided the prior opportunity to construe the statutes authorizing this aid, but such a state court construction might also avoid the necessity for federal court intervention.

Petitioners contend that state regulations requiring aid to the unborn are unauthorized by state law and are contrary to the Social Security Act. As discussed in the

previous sections, state regulations requiring payment of AFDC to families with unborn children are required by Welfare and Institutions Code §§ 11202 and 11250. Moreover, state law can and frequently does provide benefits to individuals ineligible for federal financial participation. Such aid is not contrary to the Social Security Act since the Act does not govern state programs funded without federal financial participation.

Thus, if this Court believes that state law is unclear, the California courts should be given the opportunity to interpret sections 11202 and 11250 to impose an independent state obligation to provide AFDC for unborn children. Such an interpretation would obviate the need to adjudicate the federal question.

II.

THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE MAY AUTHORIZE FEDERAL FINANCIAL PARTICIPATION TO STATES WISHING TO PROVIDE AFDC TO FAMILIES WITH UNBORN CHILDREN

The trial court dismissed petitioners' first cause of action on grounds of standing, rather than for failure to state a claim upon which relief could be granted. Only the second cause of action, challenging the *state* regulations, was dismissed for failure to state a claim. The merits of petitioners' challenge to the federal unborn child regulations are therefore not properly before this court. Since petitioners have argued this issue as their initial point, however, respondents will briefly discuss the invalidity of petitioners' contention.

A.

No Conflict Exists Among the Circuits on This Issue.

Petitioners argue that there is a conflict among the circuits regarding the legality of federal financial participation in AFDC payments to families with unborn children. (Petition at 9.) Two of the three decisions relied on by petitioners as establishing the illegality of this practice were either reversed or vacated by this Court. *Alcala v. Burns*, 494 F.2d 743, 746 (8th Cir. 1974), *rev'd*, 420 U.S. 575 (1975); *Parks v. Harden*, 504 F.2d 861, 872 (5th Cir. 1974), *vacated*, 421 U.S. 926 (1975). The remaining decision, *Wisdom v. Norton*, 507 F.2d 750 (2d Cir. 1974) requires somewhat greater discussion.

In *Wisdom*, the Court of Appeals for the Second Circuit concluded in dictum that the Secretary had no authority to authorize federal financial participation for families with unborn children. 507 F.2d at 756. That case hardly presents a decision on the merits of the legality of the Secretary's practice, however. The Secretary was not a party to that action and was not even invited to file a brief expressing his views. In addition, both parties to that action agreed that the optional program was illegal. 507 F.2d at 756; Opinion on petition for rehearing, at 2.

Similarly, the Court of Appeals for the Ninth Circuit has never concluded that the Secretary's practice was legal. Rather, the Court only determined that the petitioners herein did not have standing to challenge the practice. Thus, no conflict exists among the circuits.

B.

The Secretary Has the Authority To Make Federal Financial Participation Available To Meet the Needs of Unborn Children Under 42 U.S.C. § 1302.

In *Burns v. Alcala*, this Court explained that, "We have no occasion to decide . . . whether 42 U.S.C. § 1302 authorizes HEW to fund benefits for unborn children as a form of temporary aid to individuals who are in the process of qualifying under federal standards." 420 U.S. at 586. 42 U.S.C. § 1302 does provide such authorization since federal financial participation in AFDC payments to families with unborn children is consistent with the program and necessary for its efficient administration.

Federal financial participation in grants for unborn children is just one of a number of optional AFDC programs. These optional programs provide federal financial participation in payments made to individuals in the process of gaining or losing eligibility for the AFDC program. See, *Burns v. Alcala, supra,* 420 U.S. at 584-585. In all of these programs, the effect of granting aid is to provide money necessary during a transition period in order to minimize dependence later.[2]

[2]The authority of the Secretary of HEW to grant such assistance, including aid for the unborn, is discussed at length in Note, "HEW's Power To Grant AFDC Benefits to Technically Ineligible Individuals," 124 U. Penn. L. Rev. 1359 (1976). That note concludes, "HEW has the power under section 1102 of the [Social Security] Act to authorize payments on behalf of . . . persons who temporarily do not meet the technical eligibility criteria of the Act when assistance is substantially related to those persons' needs arising at the time of technical eligibility." *Id.* at 1383. See also *Parks v. Harden*, 504 F.2d 861, 875-877 (5th Cir. 1974) (Ainsworth, J., dissenting).

45 C.F.R. § 233.90(c)(2)(i), for example, provides federal financial participation in payments made to a relative before the child goes to live with the relative. Pursuant to 45 C.F.R. § 233.90(c)(2)(iii), federal financial participation is available in payments made to a relative where the child has already left the home of the relative. Under 45 C.F.R. § 233.90(c)(2)(iv), federal financial participation is available in payments made to a non-relative who is caring for a child in an emergency situation. In each of these transition situations, the federal government helps meet increased short term needs.

Pregnant women also need additional funds to meet their increased nutritional needs and to prepare the home for the arrival of the child. Additional AFDC benefits can help buy a crib, baby clothes, diapers, and help meet the myriad other expenses associated with a newborn child. The regular AFDC grant is insufficient to meet these basic needs since grant levels are established without taking such needs into consideration. Welfare and Institutions Code §11452. In addition, in California, as in most other states, grant levels are established at less than the minimum need levels. *Compare,* for example, Welfare and Institutions Code §11450 with §11452.

Pregnant women are also in need of medical care, including prenatal care and maternity services. While Title V of the Social Security Act, 42 U.S.C. §§ 701-708, provides assistance for some prenatal and postnatal services, especially for high risk infants, it is not available to meet the basic health care needs of pregnant women and their unborn children.

The program that is designed to meet these needs is the Medicaid program. 42 U.S.C. §§ 1396 *et seq.* The Medicaid program limits eligibility, however, to those

families who are eligible for AFDC or who would be eligible but for excess income or resources. 42 U.S.C. § 1396a(a)(10). With this in mind, the Secretary could reasonably conclude that the need to insure adequate health care for women and newborn children requires the provision of AFDC eligibility during this transition period.

III.

NEITHER THE DISTRICT COURT NOR THE COURT OF APPEALS IMPROPERLY RELIED ON MATTERS OUTSIDE THE PLEADINGS IN GRANTING DISMISSAL OF THE PETITIONERS' CHALLENGE TO THE STATE REGULATION

Petitioners contend that the District Court and the Court of Appeals improperly relied on the "Horel Affidavit" in construing Welfare and Institutions Code § 11450. (Petition at 13.) They contend that this reliance somehow violated Federal Rules of Civil Procedure Rule 12(b).

Nothing in this rule prevents the consideration of matters outside of the pleading. The rule simply provides that if such matters have been presented and not excluded, the motion must be treated as one for summary judgment.

Petitioners do not contend that they attempted to exclude the "Horel Affidavit" from consideration by the Court. Neither do they contend that they were not given a reasonable opportunity to present all material made pertinent by its introduction.

Finally, there is no indication that the Court of Appeals even considered the "Horel Affidavit" in reaching its decision. The purpose supposedly served by the Affidavit was to construe California law as to the independent nature of the state obligation to provide AFDC to families with unborn children. Any uncertainty on that point was resolved by the decision of the California Supreme Court in *Ross v. Superior Court.*

This argument, which was presented neither to the District Court nor the Court of Appeals, should therefore be rejected.

IV.

THE PETITIONERS' CHALLENGE TO THE THEN-PENDING FEDERAL AND STATE COURT CONTEMPT PROCEEDINGS WAS PROPERLY DISMISSED

It is somewhat hard to understand why this point was raised in the petition for certiorari. As noted in the decision of the Court of Appeals, "Final judgment has now been rendered in those actions affirming the contempt judgments. . . . Thus, this claim of appellants has already been adjudicated and is now precluded by res judicata." *Plumas County Board of Supervisors v. Califano,* 594 F.2d 756, 758, n.2. Petitioners do not contend that any other actions are presently outstanding or that there is any active case or controversy to resolve.

More fundamentally, the District Court and Court of Appeals properly concluded that *Younger* abstention was appropriate under the circumstances of the case. As noted by this Court recently in *Moore v. Sims,* ___ U.S. ___, 47 U.S.L.W. 4693, 4696 (1979), "The pertinent issue is whether appellees' constitutional claims could have been raised in pending state proceedings."

Nothing prevented the petitioners herein from raising all appropriate claims in the state court proceeding. In fact, the California Supreme Court expressly considered and rejected the claim by petitioners that the underlying

injunction enforced in *Ross v. Superior Court* was invalid. 19 Cal.3d at 909, n.7. Petitioners chose not to appeal that decision to this Court.

Moreover, petitioners have never cited any authority for the proposition that the District Court had the authority to enjoin the pending federal contempt proceeding in *Yee-Litt v. Richardson.* They have never demonstrated any reasons why their bad faith claims could not have been presented in that action or that any defenses they might have had were barred from presentation. Again, petitioners chose not to appeal that decision to this Court.

Under this Court's decision in *Judice v. Vail,* 430 U.S. 327 (1977), it is difficult to understand how the District Court could have done anything but abstain. In *Juidice,* this Court reversed the decision of a district court which had enjoined enforcement of New York contempt procedures. This Court emphasized that:

> "[P]rinciples [of comity] apply to a case in which the State's contempt process is involved. A State's interest in the contempt process, through which it vindicates the regular operation of its judicial system, so long as that system itself affords the opportunity to pursue federal claims within it is surely an important interest. . . . [I]t is of sufficiently great import as to require application of the principles of those cases [*Younger v. Harris,* 401 U.S. 37 (1971); *Huffman v. Pursue, Ltd.,* 420 U.S. 592 (1975)]." *Id.,* at 335.

In the instant case, petitioners similarly contend that the contempt procedures violated their due process rights. Petitioners had an opportunity to advance those claims in the respective state and federal forums. Those claims were advanced and rejected. No review was sought

from this Court. This Court should therefore also refuse to review petitioners' claims in this action.

CONCLUSION

For the foregoing reasons, respondents urge that the Petition for Certiorari be denied.

Respectfully submitted,

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Washington, D.C.

APPENDIX

APPENDIX

CALIFORNIA WELFARE AND INSTITUTIONS CODE

§ 11202. Needy child

As used in this chapter, the term "needy child" means a child living in a family as described in Section 11250, or a child as described in Section 11251.

CALIFORNIA WELFARE AND INSTITUTIONS CODE

§ 11250. Families

Aid, services, or both, shall be granted under the provisions of this chapter, and subject to the regulations of the department, to families with related children under the age of 18 years, except as provided in Section 11253, in need thereof because they have been deprived of parental support or care due to:

(a) The death, physical or mental incapacity, or incarceration of a parent; or

(b) The divorce, separation or desertion of a parent or parents and resultant continued absence of a parent from the home for these or other reasons; or

(c) The unemployment of a parent or parents.

§ 11452. Minimum basic standards of adequate care

Minimum basic standards of adequate care shall be distributed to the counties and shall be binding upon them. Such standards are hereby determined on the basis of the schedule set forth in this section, as adjusted for cost-of-living increases or decreases pursuant to Section 11453, which schedule is designed to insure:

(1) Safe, healthful housing.

(2) Minimum clothing for health and decency.

(3) Low-cost adequate food budget meeting recommended dietary allowances of the National Research Council.

(4) Utilities.

(5) Other items including household operation, education and incidentals, recreation, personal needs, and insurance.

(6) Allowance for essential medical, dental, or other remedial care to the extent not otherwise provided at public expense.

The schedule of minimum basic standards of adequate care is as follows:

Number of needy persons in the same family	Minimum basic standards of adequate care
1	168
2	282
3	343
4	422
5	487
6	549
7	604
8	667
9	730
10	794

plus seven dollars ($7) for each additional needy person.

The department shall establish rules and regulations assuring the uniform application statewide of the provisions of this section.

CALIFORNIA WELFARE AND INSTITUTIONS CODE

§ 15200. Needy children

There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting federal funds available, the following sums:

(a) To each county for the support and maintenance of needy children, 67.5 percent of the sums specified in Section 11450.

45 C.F.R. § 233.90(c)(2)(i)

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC.

45 C.F.R. § 233.90(c)(2)(iii)

(2) Federal financial participation is available in:

(iii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC, and

45 C.F.R. § 233.90(c)(2)(iv)

(2) Federal financial participation is available in:

(iv) Payments made to persons acting for relatives specified in section 406(a)(1) of the Act in emergency

situations that deprive the child of the care of the relative through whom he has been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.